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Amc
12/21/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEVI SLACK, JR.,

Plaintiff

v.

LEBANON COUNTY CORRECTIONAL
FACILITY, et al.,

Defendants

CIVIL ACTION NO. **1:CV-01-0708**

(Judge Caldwell)

(Magistrate Judge Blewitt)

REPORT AND RECOMMENDATION

2-1-11
AMC
LWK

Plaintiff, while an inmate at the Lebanon County Prison, filed this action pursuant to 42 U.S.C. § 1983 on April 23, 2001. Plaintiff is proceeding *pro se*.

On August 23, 2001, a Report and Recommendation was issued by the undersigned. A copy of same was mailed to Plaintiff at his address of record. (Doc. 16). On August 29, 2001, the mailing containing the Report and Recommendation was returned to the Court marked "Released - Left No Address." (Doc. 17). On October 2, 2001, the Honorable William W. Caldwell issued an order affording Plaintiff ten (10) days from the date thereof to file a statement with the Clerk of Court indicating whether he wishes to oppose Defendants' pending motion to dismiss. Plaintiff was notified that failure to file such a statement would result in the dismissal of the complaint. The Order further directed Plaintiff to advise the Court of any future change of address and warned him that his failure to do so would result in dismissal of the action. Copies of said order were mailed to Plaintiff at both the State Correctional

Institution at Greene, Pennsylvania, (SCI-Greene) and the Lebanon County Correctional Facility. (Doc. 18). On October 16, 2001, Plaintiff filed Objections to the Report and Recommendation. (Doc. 19). On October 23, 2001, the Honorable William W. Caldwell issued an order directing the Clerk of Court to deliver to Plaintiff various documents contained in the file of this action, directing Plaintiff to respond to the Defendants' pending motion within twenty (20) days of the date thereof, and remanding the matter to the undersigned for further proceedings. (Doc. 20). On October 29, 2001, this mailing was returned to the Court. A call to the prison by the Clerk of Court revealed that Plaintiff had been transferred to SCI-Greene. The order was re-sent to Plaintiff at SCI-Greene. (Doc. 21). On November 9, 2001, the re-sent mailing was again returned to the Court in an envelope marked "Return to Sender, Need Correct Inmate Number." (Doc. 22). After obtaining Plaintiff's inmate number from SCI-Greene, the mailing was again re-sent.

The time in which Plaintiff was to have filed a response to Defendants' pending motion to dismiss has expired. The Plaintiff has neither filed the response nor requested an extension of time in which to do so.

Federal Rule of Civil Procedure 41(b) allows for the dismissal of an action for "failure of the plaintiff to *prosecute* or comply with these rules or *order of court*, . . ." (emphasis added). In the instant case, Plaintiff has failed to both prosecute the action and to comply with an order of the court by his failure to file a response to Defendants' motion to dismiss.

Based on the foregoing, it is respectfully recommended that the complaint be dismissed on the basis of Plaintiff's failure to timely file a response to the Defendants' motion to dismiss the complaint and for failure to comply with an order of the court.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: December 21, 2001

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEVI SLACK, JR.,

Plaintiff

v.

LEBANON COUNTY CORRECTIONAL
FACILITY, et al.,

Defendants

CIVIL NO. 1:CV-01-0708

(Judge Caldwell)

(Magistrate Judge Blewitt)

SO ORDERED

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NOTICE

PER Amo
DEFC

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated **December 21, 2001**.

Any party may obtain a review of the Report and Recommendation pursuant to
Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

A handwritten signature in black ink, appearing to read 'T. M. Blewitt', written over a horizontal line.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: December 21, 2001